learned magistrate overlooked the decision of Thomson J. (as he then was) in the case of *Public Prosecutor* v. *Idris* [1] that section 294 can only be made use of where the conviction is for an offence punishable with imprisonment without the option of a fine. As an offence under section 384 of the Penal Code is punishable by imprisonment or fine and as the learned magistrate did not record a conviction against the accused, the proper course for him was to bind over the accused under section 173A of the Criminal Procedure Code. I therefore set aside his order and substituted in its place an order of binding over under section 173A.

I would like to take this opportunity to add that extortion is a serious offence, and an offence which is much too common these days. The only way to stamp out this offence, or at least to keep it in check is to pass a deterrent sentence on persons found guilty of it. People are terrified of extortionists and it is difficult to apprehend them. Once a person is produced in court on a charge of extortion and found guilty, he must be dealt with severely, unless there are exceptionally extenuating circumstances. The only reason why I did not interfere with the nature of the order made by the learned magistrate was that the Public Prosecutor had not appealed against it.

Order accordingly.

PUBLIC PROSECUTOR v. YONG FATT

[A.Cr.J. (Ong J.) November 14, 1963]

[K.L. — Criminal Appeal No. 62 of 1963]

Criminal Procedure—Sentence—Inadequacy of—Rampant crime—No extenuating circumstances for leniency—Criminal Procedure Code (Cap.6), ss.168 and 294.

Penal Code, ss.384, 385—Extortion—Vicious and rampant crime.

This was an appeal by the prosecution against inadequacy of sentence. The respondent had pleaded guilty to a charge of extortion or attempted extortion and the learned magistrate after recording conviction, bound over the accused in the sum of $500 with one surety to be of good behaviour for two years.

Held: (1) the sentence imposed by the learned magistrate was manifestly inadequate;

(2) as extortion is a vicious crime that is rampant and there were no extenuating circumstances calling for the exercise of special leniency under section 294 of the Criminal Procedure Code the maximum sentence that could be imposed by the magistrate substituted.

CRIMINAL APPEAL.

Harun bin Hashim (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Ong J. (delivering oral judgment): This is an appeal by the Public Prosecutor against inadequacy of sentence. The respondent had pleaded guilty in the Magistrate's Court to a charge of extortion, an offence punishable under section 384 of the Penal Code with imprisonment up to 3 years or fine or whipping or with any two of such punishments.

The summary of facts stated by the prosecution and admitted by the accused is that Dr. Chong, a private medical practitioner, on May 17, 1963 received a threatening letter demanding $2,000 from him as protection money. He made his report the next day. On May 20 the doctor received a telephone call instructing him to leave the money at a stated time and place. Nobody, however, turned up to collect the money. A week later on May 27, there was another telephone message to the doctor giving fresh instructions as to where and when the money was to be left. The doctor carried out these instructions. The accused appeared on the scene shortly after, and was arrested by the police. The money was found in his pocket.

I do not think he was rightly convicted under section 384 because when the delivery of the money was made it was done to bait the trap for the accused. The facts admitted by the accused, however, clearly establish beyond any shadow of doubt that he was guilty of attempting to put the complainant in fear of injury in order to the committing of extortion, an offence under section 385 of the Penal Code. Under section 168 of the Criminal Procedure Code an accused person charged with an offence may be convicted of an attempt to commit that offence, although the attempt is not separately charged. I accordingly substitute for the conviction under section 384 one under section 385.

The learned magistrate, after recording conviction, bound over the accused in the sum of $500 with one surety to be of good behaviour for 2 years. By all men of good sense this sentence must be held manifestly inadequate. It was also wrong in principle because of all crimes in the Penal Code there are few more vicious than extortion. In this case there were no extenuating circumstances whatsoever calling for the exercise of special leniency under section 294 of the Criminal Procedure Code. An English judge said only 3 weeks ago:

> "If the public felt that the courts were not dealing properly with evildoers then it would lose confidence in them. When thinking of a sentence as a deterrent it was important not only to consider the effect on the accused but whether the sentence would deter others."

This form of crime is rampant; the criminals operate in safety, and only few are caught with sufficient evidence to secure a conviction. They are vermin, and must be dealt with as such.

In the court where this accused was tried the maximum sentence that can be passed on him is imprisonment for one year, or whipping up to 6 strokes, or both. I regret that I cannot in the circumstances pass a heavier sentence to deter

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this person and others having a penchant towards this type of crime. The order of the magistrate is therefore set aside and instead thereof I pass sentence on him of 1 year's imprisonment with effect from today and 6 strokes of the rattan. Stronger medicine will be dosed out to those committing extortion who come before the courts in future.

Order accordingly.

RE ABU KASSIM

[R.Cr.J. (Gill J.) November 27, 1963]

[K.L. — Criminal Revision No. 11 of 1963]

Criminal Procedure—Charge framed under repealed statutory provision—Whether conviction valid.

Immigration—Immigration Ordinance, 1959, ss.15(1) & 58(2)—Charge under repealed section—Proceedings commenced without sanction of Public Prosecutor or Comptroller of Immigration.

The accused was charged and pleaded guilty to an offence under regulation 15(3) of the Immigration Ordinance, 1959, at a time when the said regulation had already been repealed.

Held: the conviction must be set aside.

Per curiam: for valid criminal proceedings to be instituted under section 15(1) of the Immigration Ordinance, 1959 the sanction of the Public Prosecutor or the Comptroller of Immigration must be obtained.

CRIMINAL REVISION.

Ibrahim bin Salleh (Deputy Public Prosecutor) for Public Prosecutor.

Accused in person.

Gill J.: This case has been brought to my notice by the Public Prosecutor for purposes of revision.

The accused Abu Kassim bin Kung, an Indonesian, was charged in the Magistrate's Court, Kuala Lumpur, on the 21st day of October, 1963 as follows:

"That you on 19.10.1963 at about 11.00 p.m., at Reno Hotel, Kuala Lumpur, in the State of Selangor, did remain in the Federation of Malaya, after the expiry of your permit No.71254 issued by the Inspector of Immigration, Port Swettenham on 16.10.1963, to wit was valid until 9.00 a.m. 19.10.1962 and that you have thereby committed an offence under regulation 15(3) of Immigration Ordinance, 1959 and punishable under section 57 of the said Ordinance."

To the above charge the accused pleaded guilty. Sentence was postponed to 28th October, 1963 when he was sentenced to imprisonment for three months to be followed by an order of deportation. It is apparent from the record that the accused was charged under a section of the Immigration Ordinance, 1959 which had been repealed. Moreover, no sanction of the Comptroller of Immigration or the Public Prosecutor, as required by section 58(2) of the Ordinance, was obtained for the purpose of instituting the criminal proceedings against the accused. I therefore set aside his conviction and sentence on the charge as framed against him in the Magistrate's Court.

The accused has now been produced before me on this application for revision and Enche' Ibrahim bin Salleh, Deputy Public Prosecutor, has produced the necessary sanction and a fresh charge as follows has been framed against the accused:

"That you on 19th October, 1963 at about 11.00 p.m. at Reno Hotel, Kuala Lumpur, in the State of Selangor, did remain in the Federation of Malaya, after the expiration of permit No. 71254 issued by the Inspector of Immigration, Port Swettenham dated 16th October, 1963, in contravention of the provisions of section 15(1) of the Immigration Ordinance, 1959 and you have thereby committed an offence punishable under section 57 of the said Ordinance."

The accused has pleaded guilty to this charge. I convict him on his plea and sentence him to three months' imprisonment with effect from 28th October, 1963, to be followed by his deportation to Indonesia.

Order accordingly.

COELHO v. THE PUBLIC SERVICES COMMISSION

[O.C.J. (Ong J.) November 28, 1963]

[K.L. — Originating Motion No. 10 of 1960]

Contract—Public Services Commission inviting applications for posts—Invitation by newspaper—Qualified acceptance of application not communicated to applicant—Whether on probation—Subsequent termination of applicant's appointment as officer on probation—Whether Commission acted ultra vires.

Master and Servant—Dismissal—Whether ultra vires.

Certiorari—Order of, to quash decision of the Public Services Commission.

The applicant a Health Inspector under the Town Board, Tanjong Malim applied for the post of Assistant Passport Officer in the Federation of Malaya Government Oversea Missions advertised in the *Malay Mail* newspaper dated February 19, 1957 as follows:—"Applicants will be selected according to the following order of preference: (i) Serving Assistant Passport Officer and serving Junior Assistant Passport Officers in the Immigration Department who have had not less than 5 years' service and possess School Certificate. (ii) All serving Government Officers who have had 5 years' service and who possess School Certificate....Officers will be eligible for overseas allowance when abroad....Free passages to overseas posts ....Free medical (but not dental) attention....Outfit allowances....Applications (those from serving Officers to be submitted through Heads of Department with Confidential Reports and Record of Service) to reach the Secretary, Public Service Commission (Designate), Young Road, Kuala Lumpur, 28th February, 1957." Consequently the applicant was informed that he was accepted and after undergoing a period of training he was posted to the Immigration Office, Kuala Lumpur until December 1958 when he was transferred to the Immigration Office at Johore Bahru. On November 5, 1959, the Secretary to the Public Services Commission in a letter addressed to the applicant as "Assistant Passport Officer on Probation" informed him that following a report from the Controller of Immigration concerning his conduct in the irregular issue of certain passports disciplinary action was being taken against him with a view to his dismissal. The applicant made representations as invited by the said letter and on December 24,